IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Bail Appl..No. 5699 of 2007()

CRIME NO.384/07 OF ETTUMANOOR POLICE STATION

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APPLICANT/ACCUSED

C.T.LUKOSE, AGED 55 YEARS,
S/O THOMAS, THOMAS VILLA(CHIRAYIL),
ATHIRAMPUZHA KARA, ATHIRAMPUZHA VILLAGE,
KOTTAYAM.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENT: COMPLAINANT & STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

R. BASANT, J.

B.A. No. 5699 OF 2007

Dated this the 10th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Essential Commodities Act and the Kerala Rationing Order. The crux of the allegations against the petitioner is that ration wheat, without any documents to support such possession to the tune of 320 bags i.e., about 16000 Kgs., was found available in the premises of the petitioner. Crime has been registered. Investigation is in progress. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The mere fact that 320 bags were in excess should not be reckoned as conscious culpable possession of such quantity. It cannot be lost sight of that the alleged quantity is available with the petitioner who is in possession of a large quantity legally. The excess quantity

of 320 Kgs. cannot lead to any inference of culpability against the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

2. Though a contention was raised that the offence is bailable, in the light of the decision in **Nirmal Kanti Roy v. State of West Bengal** ((1998) 4 SCC 590), after the discussions at the Bar, that point is not pressed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the quantity of wheat found is huge. Notwithstanding the fact that the petitioner was having possession of larger quantity in his godown, the possession has not been explained satisfactorily and, in these circumstances, the discretion under Sec.438 of the Cr.P.C. may not be invoked in favour of the petitioner, it is prayed.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge